Avondale Industries, Inc. *and* New Orleans Metal Trades Council, AFL–CIO. Cases 15–CA–14326 and 15–CA–14327

October 22, 1997

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS FOX AND HIGGINS

Pursuant to a charge filed on May 9, 1997, and an amended charge filed on May 16, 1997, the General Counsel of the National Labor Relations Board issued a consolidated complaint on June 3, 1997, alleging that the Respondent has violated Section 8(a)(5) and (1) of the National Labor Relations Act by refusing the Union's request to bargain and to furnish necessary and relevant information following the Union's certification in Case 15–RC–7767. (Official notice is taken of the ''record'' in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer admitting in part and denying in part the allegations in the complaint, and asserting certain affirmative defenses.

On August 8, 1997, the General Counsel filed a Motion for Summary Judgment. On August 11, 1997, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. On September 5, 1997, the Respondent filed an opposition to the Motion for Summary Judgment and a motion for leave to take depositions, and on September 12, 1997, filed a motion to substitute motion for leave to take depositions. On September 16, 1997, the General Counsel filed an opposition to the Respondent's application for leave to take depositions.

Ruling on Motion for Summary Judgment

In its answer and response the Respondent admits its refusal to bargain and to furnish information to the Union but attacks the validity of the certification on the basis of its challenges and objections to the election in the representation proceeding.[1]

The Respondent asserts that newly discovered and previously suppressed evidence, consisting of unredacted, marked voting lists,[2] establishes a prima facie case of voting irregularities sufficient to require setting the election aside, thus requiring a hearing under Section 102.65(e)(1) of the Board's Rules and Regulations. The Respondent also filed a motion for leave to take depositions from 126 individuals under Section 102.30 of the Board's Rules and Regulations. The Respondent submits that those individuals were employees of the Respondent who were recorded as absent from work on the day of the election and who were not recorded on ''gate logs'' as having entered the premises where the election was conducted that day, but who were nonetheless marked on the unredacted voting lists as having voted. The Respondent contends that their depositions would demonstrate that they in fact did not vote and that unchallenged votes were cast in their names by other individuals.

As the General Counsel notes, the Board has previously rejected motions to reopen the record to include the voting lists, first in their redacted form and then in their unredacted form. On February 5, 1997, the Board issued a Decision and Direction in the underlying representation proceeding, affirming the hearing officer's recommendation to overrule the Respondent's election objections and denying the Respondent's motion to reopen the record to include the Master and Zone Voting Lists (which the Respondent then possessed in their redacted form) as lacking the specificity required by Section 102.65(e) of the Board's Rules and Regulations. The Board also found no merit in the Respondent's claim that the failure of the Regional Office to produce the lists earlier had prejudiced its presentation of the case.

On March 18, 1997, the Board denied the Respondent's February 20, 1997 motion to reopen the record to receive new evidence and to stay the certification. The Respondent sought to reopen the record to receive ''the original multi-color marked and unredacted master voting lists . . . and the original multi-color marked and unredacted zone voting lists for each polling place.'' The Respondent asserted that testimony concerning the lists would support its postelection objections alleging voter fraud and irregularities sufficient to require setting aside the election. The Board held that the Respondent's motion lacked merit and raised issues previously considered. In particular, the Board held again that the Respondent's motion lacked the specificity required by Section 102.65(e) of the Rules. The Board added, ''[F]urthermore, given the exhaustive litigation of all challenged ballot and objections issues—comprising the examination of approximately 200 witnesses and the presentation of extensive documentary evidence, we find no merit in the Employer's claim that the absence of 'multicolor marked and unredacted' lists prejudiced its presentation of the case.''

Finally, in the Board's April 29, 1997 Decision and Certification of Representative, the Board noted its

[1] Although the Respondent denies the appropriateness of the unit, we note that the Respondent entered into a stipulated election agreement, and the challenged ballots were resolved in the underlying representation case. Further, it appears that the Respondent's denial is based on its contention that the Union has not been lawfully certified.

[2] The Respondent obtained the unredacted lists on February 18, 1997, pursuant to an Order of the United States Court of Appeals for the Fifth Circuit in a case filed by the Respondent under the Freedom of Information Act.

prior denials of the Respondent's attempts to introduce the voting lists into evidence, and in reviewing the Regional Director's report, declined to consider the Respondent's submission of the unredacted lists.

Thus, it is clear that, with the exception of the Respondent's proffer of ''gate logs'' and sick leave records and the depositions that it now seeks to take, all representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941).

With respect to the depositions and related proffers, we find that the Respondent's representations concerning them add nothing of significance to its earlier proffers of the voting lists, for which the Board declined to reopen the record. The Respondent concedes that it is not in possession of all the gate logs and that the log sign-in requirement applies only at ''times other than shift change and during the lunch break.'' Thus, the fact that a particular voter's name may not appear on any of the gate logs is not evidence that the vote was cast by someone else in that individual's name. In these circumstances, and given that the Petitioner won the election by 318 votes, we agree with the General Counsel that the Respondent's assertions of fraud are too speculative to warrant permitting it to take the 126 requested depositions. We therefore deny the motion for leave to take depositions. See *Thomas-Davis Medical Centers*, 324 NLRB 29 fn. 2 (1997).

We also find that there are no issues warranting a hearing with respect to the Union's request for information. The complaint alleges that the Union requested the following information from the Respondent: the full name, address, and phone number of all bargaining unit employees. Although the Respondent's answer denies that this information is necessary and relevant to the Union's performance of its duties as the exclusive bargaining representative of the unit, it is well established that such information is presumptively relevant for purposes of collective bargaining and must be furnished on request. See, e.g., *Maple View Manor, Inc*., 320 NLRB 1149 (1996).

Accordingly, we grant the Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a corporation, with an office and place of business in Avondale, Louisiana (its facility), has been engaged in business as a ship builder. During the 12-month period ending April 30, 1997, the Respondent, in conducting its business operations described above, sold and shipped from its facility goods valued in excess of $50,000 directly to points outside the State of Louisiana, and purchased and received at its facility goods valued in excess of $50,000 directly from points outside the State of Louisiana. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. *The Certification*

Following the election held June 25, 1993, the Union was certified on April 29, 1997, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

> All production and maintenance employees employed by the Employer at its Avondale, Algiers, and Westwego, Louisiana, locations, excluding all office clerical employees employed by the Employer at the Employer's Service Foundry facility located in Waggaman, Louisiana, guards, professional employees, and supervisors as defined in the Act.

The Union continues to be the exclusive representative under Section 9(a) of the Act.

B. *Refusal to Bargain*

Since May 5, 1997, the Union has requested the Respondent to bargain and to furnish information, and, since May 9, 1997, the Respondent has refused. We find that this refusal constitutes an unlawful refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSION OF LAW

By refusing on and after May 9, 1997, to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit and to furnish the Union requested information, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union, and, if an understanding is reached, to embody the understanding in a signed agreement. We also shall order the Respondent to furnish the Union the information requested. To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by the law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), enfd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817 (1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), enfd. 350 F.2d 57 (10th Cir. 1965).

ORDER

The National Labor Relations Board orders that the Respondent, Avondale Industries, Inc., Avondale, Louisiana, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with New Orleans Metal Trades Council, AFL–CIO as the exclusive bargaining representative of the employees in the bargaining unit, and refusing to furnish the Union information that is relevant and necessary to its role as the exclusive bargaining representative of the unit employees.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

> All production and maintenance employees employed by the Employer at its Avondale, Algiers, and Westwego, Louisiana, locations, excluding all office clerical employees employed by the Employer at the Employer's Service Foundry facility located in Waggaman, Louisiana, guards, professional employees, and supervisors as defined in the Act.

(b) Furnish the Union information that it requested on May 5, 1997.

(c) Within 14 days after service by the Region, post at its facilities in Avondale, Algiers, and Westwego, Louisiana, copies of the attached notice marked ''Appendix.''[3] Copies of the notice, on forms provided by the Regional Director for Region 15 after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since May 9, 1997.

(d) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

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[3] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with New Orleans Metal Trades Council, AFL–CIO as the exclusive representative of the employees in the bargaining unit, and WE WILL NOT refuse to furnish the Union information that is relevant and necessary to its role as the exclusive bargaining representative of the unit employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

All production and maintenance employees employed by us at our Avondale, Algiers, and Westwego, Louisiana, locations, excluding all office clerical employees employed by us at our Service Foundry facility located in Waggaman, Louisiana, guards, professional employees, and supervisors as defined in the Act.

WE WILL furnish the Union the information it requested on May 5, 1997.

AVONDALE INDUSTRIES, INC.